

AUG 01 2006

**CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS**

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

ANA BERTHA HUERTA-ANGUIANO,

Petitioner,

v.

ALBERTO R. GONZALES, Attorney
General,

Respondent.

No. 04-72124

Agency No. A78-652-076

MEMORANDUM^{*}

On Petition for Review of an Order of the
Board of Immigration Appeals

Submitted July 24, 2006 ^{**}

Before: ALARCÓN, HAWKINS, and THOMAS, Circuit Judges.

Ana Bertha Huerta-Anguiano, a native and citizen of Mexico, petitions for review of the Board of Immigration Appeals' ("BIA") order upholding the denial of her application for cancellation of removal and for review of the Legalization

^{*} This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by 9th Cir. R. 36-3.

^{**} The panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

Appeals Unit's ("LAU") order affirming the denial of her special agricultural worker ("SAW") application. We have jurisdiction to review the denial of a SAW application under 8 U.S.C. § 1160(e)(3). We grant the petition for review.

We reverse a decision of the LAU where it abuses its discretion or when it makes findings that are contrary to clear and convincing facts contained in the record when considered as a whole. *Perez-Martin v. Ashcroft*, 394 F.3d 752, 758 (9th Cir. 2005). The LAU abused its discretion when it refused to consider Huerta-Anguiano's witness affidavits, based in part on its erroneous observation that the affiants did not state their "willingness to personally verify the information provided." *See id.* The LAU further abused its discretion by basing its decision, in part, on a memo summarizing its interview with a farm owner without providing Huerta-Anguiano an opportunity to rebut the new evidence. *See* 8 C.F.R. § 103.2(b)(16)(i).

In light of our disposition, we need not reach Huerta-Anguiano's contentions regarding her cancellation of removal application.

Accordingly, we grant the petition for review and vacate the order of removal. We remand to the LAU for further consideration of Huerta-Anguiano's SAW application.

PETITION FOR REVIEW GRANTED; REMANDED.